



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1998

Ms. Lilia Ledesma
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR98-3152

Dear Ms. Ledesma:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120723.

The City of McAllen received a request for a particular offense report. You seek to withhold the requested report under section 552.108 of the Government Code. We do not address your claim under section 552.108 because your request for an attorney general's decision was untimely.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. Generally, a compelling demonstration to overcome the presumption of openness must show that the information is made confidential by another source of law or affects third party interests. See, e.g., Open Records Decision No. 150 (1977).


You received the request for information on September 15, 1998. Your letter seeking a decision from this office was postmarked October 1, 1998. Consequently, you have not met your statutory burden. Gov't Code 552.301. The requested information is therefore

presumed public and may not be withheld under a permissive exception such as the one you claimed here, section 552.108.

In addition to your section 552.108 claim, you assert that the information at issue is made confidential by section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code. Section 552.101 requires withholding information made confidential by law. We note that section 51.14, dealing with the confidentiality of juvenile records, was repealed in 1995, although it still applies to juvenile conduct occurring before the effective date of its repeal. Acts 1995, 74th Leg. Ch. 262, § 100(a), eff. Jan. 1, 1996. Confidentiality of "law enforcement records and files concerning a child" is now treated under section 58.007 of the Family Code. In any case, the records you submitted as responsive to the request are not subject to any of these provisions, which pertain to juvenile justice records. Although the report you submitted refers to two children, the children were only witnesses to the reported incident. We have however marked a Texas license plate number which must be withheld from the requested report pursuant to section 552.130 of the Government Code. Otherwise, the requested report must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 120723

Enclosures: Submitted documents

cc: Ms. Ana M. Fuentes
1016 W. Warren
Pharr, Texas 78577
(w/o enclosures)